SUPREME COURT, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968.

No. 682

FRANK DITTO,

Petitioner,

vs.

CITY OF CHICAGO, A MUNICIPAL CORPORATION; ORLANDO W. WILSON, SUPERINTENDENT OF POLICE OF THE CITY OF CHICAGO,

Respondents.

OPPOSITION BRIEF OF RESPONDENTS, CITY OF CHICAGO AND ORLANDO W. WILSON.

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OPPOSITION BRIEF OF RESPONDENTS, CITY OF CHICAGO AND ORLANDO W. WILSON.

To the Honorable, the Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States:

Respondents pray that the writ of certiorari be denied.

QUESTIONS PRESENTED.

It is submitted that Petitioner's statement of the questions presented is inaccurate in not reflecting essential facts and circumstances of the case. Respondents submit as the true questions presented:

1. In a State Court conviction for contempt where the sentence imposed was confinement "for a period not to exceed six (6) months or until released by process of law" hasn't the absence of a Constitutional right to jury trial in

such case been settled by this court in *Bloom* v. *Illinois,* 391 U. S. 194, *Dyke* v. *Taylor Implement Mfg. Co.,* 391 U. S. 216, and *Cheff* v. *Schnackenberg,* 384 U. S. 373?

2. Notwithstanding that the sentence below did not exceed six (6) months, in a proceeding for contempt when the defendant presented no evidence whatsoever, and thus no contested issue of fact was involved, and defendant based his entire defense on the legal issue of the want of jurisdiction of the Court to enter the injunction or order, in such case, is not the question of a right to jury trial academic, hypothetical or moot?

3. In a State Court proceeding for contempt in the violation of an injunction, when a defendant had actual knowledge of the date and time for the hearing on the motion for entry of the injunction, was actually present in court at the hearing thereon, stated no objection thereto and while an attorney present offered to represent him, he rejected representation, and when three (3) days later, without having taken any legal action seeking to dissolve or modify the said injunction, he announced at a public press conference his "*conscious intent to defy the court injunction*", and thereafter that day did violate the injunction, is not the case of *Walker* v. *Birmingham,* 388 U. S. 307, completely dispositive of the illegality of defendant's conduct and the absence of any Constitutional infirmity in the conviction below?

MANNER OF RAISING ISSUES BELOW.

Petitioner states under this heading in its Petition that it filed motions to strike and dismiss and for an order to vacate and set aside the injunction order. (Pet. for Cert., p. 8.) This is not true. Petitioner moved to strike and dismiss the complaint (R. p. 65) and to strike the Petition for a Rule to Show Cause and to vacate the order to show

cause (R. p. 68). In addition, these motions were not filed until 15 days *after* Petitioner had announced and had, in fact, wilfully and intentionally violated the injunction. These motions were filed on September 6, 1966, the same day the show cause hearing was *completed* and Petitioner was found guilty and sentenced. (R. pp. 65 and 68.)

STATEMENT OF THE CASE.

Because the petitioner has made a number of statements which are either in error or inaccurate and has omitted numerous significant facts and matters of the utmost relevance in understanding the decision below, the following observations and supplemental Statement of the Case is submitted.

While petitioner states that the injunction order was entered without formal notice, and refers in a number of instances in the Petition to it having been entered *ex parte,* the fact of the matter is that petitioner herein was *in fact* present in court at the hearing on the motion for the entry of the temporary injunction, made no objection thereto at that time and while an attorney present offered to represent him, he chose not to be represented (R. p. 18-20; p. 43-44).

The injunction was entered on August 19, 1966. (R. 44.) Three days later, on August 22, 1966, *and without having taken any legal action whatsoever to modify or dissolve the temporary injunction order,* petitioner held a press conference with reporters and television present and announced his *"conscious intent to defy the court injunction issued by Judge Cornelius Harrington".* (R. p. 167.) At the said press conference, petitioner expressed his full knowledge of the potential consequences of his act, stating:

> "In the course of the last two years I have been arrested a total of fifteen times. In each and every case I have considered it not a punishment but a privilege to participate in the process of constantly amended

and improved interpretation of what we, at any given moment, consider to be the law of the land." (R. p. 167.)

Petitioner did conduct a march in violation of the injunction later that day. While petitioner attempts to imply that the results were not disorderly, disruptive or provocative (Pet. for Cert. p. 7), the evidence at the trial established that the demonstration was in a residential area of the city between 7 and 8:30 P.M.; there were spectators present; the police had to address the demonstrators with a blow horn; in the regular course of police activity in this entire area only 8 to 10 police are normally assigned; the assignment of police necessitated within a few blocks by the march was: All the cars in the surrounding area except one wagon; 4 sergeants, 22 patrolmen from the task force, 2 policewomen from the youth division, 2 police officers from the Third Youth Unit, 2 police Captains and an acting Lieutenant. (R. pp. 177-182.)

Petitioner was served with a Notice and Petition for a Rule to Show Cause on August 23, 1966. (R. pp. 144-145.) The show cause hearing commenced on August 25, 1966, and on the next day, August 26, 1966, the case was continued on defendant's motion to September 6, 1966 (11 days). On September 6, 1966, the defendant's counsel rested without presenting any evidence, stating "we rest our defense on the question of the voidness of the order. We will not proceed further as to taking of any evidence in this matter". (R. p. 275.) Petitioner was found guilty of contempt of court and sentenced to confinement for a period not to exceed six (6) months or until released by process of law. (R. p. 86.)

Petitioner in three short sentences purports to state the underlying background and basis for the injunction. (Pet. for Cert. p. 5.) No mention is made by petitioner of the grave circumstances of civil disorder which existed at the time, nor the circumstances leading to the situation, which

were all set forth in the pleadings below. It is again to be noted that petitioner in no respect denied, challenged or contested any of these matters of fact. The true factual situation was summarized by the Appellate Court in its opinion below (86 Ill. App. 2d 340, 343-347), which is set forth herein for the convenience of the Court.

> "Defendants had in recent years adopted a form of concerted action described as 'civil rights marches' or 'civil rights demonstrations' as a method of petitioning for redress of their alleged grievances under the Constitutions of the United States and Illinois. During 1965 and 1966, in Chicago, these demonstrations had included a number of marches involving several thousand people, conducted under permit and in an orderly manner. However, during the same period, defendants had organized other marches and demonstrations conducted without permits, and during the course of which there were many civil disturbances resulting in the arrest of 1,372 persons. During June, July and August 1965, defendants organized and participated in almost daily 'vigils' in numbers varying from several to several hundred persons before the City Hall and other public buildings. In the latter part of 1965 and through the winter and spring of 1966, many other demonstrations were organized by defendants involving similar numbers of people. Throughout this period, the Chicago police in no way attempted to interfere with the marches and demonstrations, but, on the contrary, affirmatively assisted and protected all those involved who were peaceful and orderly.
>
> In January 1966, defendants and others advised City officials and the news media that they intended to embark upon a program of developing 'creative tension' in the City of Chicago throughout the ensuing summer. During June and July 1966, while defendants were making public statements, appearing on news media, issuing news releases, and publicly corresponding with city officials in the course of organizing people in several areas of the city, major civil disturbances erupted. These resulted in damages of more than several millions of dollars to private property, the

death of 27 persons, and injury to 374 others, including 61 police officers. In order to contain the disturbances on the west side of Chicago, it became necessary for the Illinois National Guard to assist the police, and in the course of these disturbances, over 536 persons were arrested.

During July and August of 1966, defendants adopted a pattern of demonstrating in individual neighborhoods in Chicago in diverse areas at approximately the same time, each such demonstration consisting of a substantial number of people, usually several hundred. Particularly, on August 14, 1966, three groups of demonstrators went into three separate neighborhoods, Gage Park, Bogan and Jefferson Park, each of which is separated from the others by substantial distance. The times of the demonstrations were either simultaneous or overlapping. While the three demonstrations were occurring, a severe civil disturbance involving several hundred people, and also concerning 'civil rights' marches, erupted in the Marquette Park area, adjoining Bogan.

On August 16, defendants organized six groups of demonstrators which proceeded to six separate locations in the downtown area of Chicago and demonstrated during the day. On the same date, six groups of demonstrators organized by defendants, returned to the Jefferson Park neighborhood at dark and proceeded to demonstrate until after midnight.

At each of these 'neighborhood demonstrations,' large crowds other than the demonstrators, varying in size from several hundred to several thousand people, gathered along the line of march carrying signs, hooting, throwing rocks, firecrackers and other missiles at the marchers, thereby endangering the persons and property of the marchers and other citizens as well. Several dozen automobiles belonging to the marchers and others were burned or otherwise substantially damaged. Access to the sidewalks was denied to nonparticipating citizens, the normal flow of pedestrian and vehicular traffic was obstructed, substantial damage was done to private property along the routes of

march, and 177 persons were arrested. During each of these marches and demonstrations, the Chicago police assisted and protected all those engaged therein who conducted themselves in a peaceful and orderly manner, and in no way did the police attempt to interfere with them.

Despite repeated requests by the police that adequate notice of marches and demonstrations be provided to the Police Department, and despite repeated assurances by defendants that such notice would be given (the latest assurance being August 4, 1966 by defendant Martin L. King), written notification of the locations, character and extent of the demonstrations was received by the police before only two of the more than two hundred such demonstrations. On no other occasion was notice given which was accurate, timely and verifiable. This failure to provide notice caused an extensive and unreasonable waste of police man power which would otherwise have been used for crime prevention and detection in other areas of the city. During the marches and demonstrations from July 16 to August 16, in order to protect the marchers and the persons and property of citizens who were neither participating in the marches nor in the attacks on the marchers, it was necessary for the Police Department to assign 7,124 men to special duty for the specific purpose of protecting the marchers and others in only six neighborhoods within the City of Chicago. These assignments to special duty removed policemen from normal duty posts in other areas and reduced police protection in those areas to such an extent that there resulted a substantial increase in crimes against persons and property directly attributable to such lessened police protection. The effective police patrol force on a normal watch is approximately 1,020 men, exclusive of detectives, traffic and juvenile officers. The burden placed upon the Police Department because of simultaneous marches at widely separated locations in the city is illustrated by the fact that the three marches on August 14 required assignment to special duty of 1,279 policemen.

Although defendants were requested to cease and

desist from placing this unreasonable burden on the Police Department and on the rights of other citizens to have their persons and property protected by the City, the defendants not only continually refused and threatened to continue the demonstrations in said unwarranted and injurious manner, but also threatened to expand the demonstrations into many other neighborhoods at simultaneous times. The police and city officials were informed that this course of action was imminent, and averred that if defendants were permitted to conduct simultaneous marches, it would be impossible for the police to protect the marchers, demonstrators and public and private property and persons of the more than 3½ million citizens of the city, who were not participating as marchers or as protestors, from the clear and present danger of riot, civil disturbance, and the deleterious effects of unreasonably overburdened police duties. Defendants' actions during the month of August, and particularly on the 14th and 16th, and their announced intention to expand the demonstrations into many neighborhoods at simultaneous times, constituted a clear and present danger to the order, peace and quiet, health, safety, morals and welfare of the City of Chicago. Plaintiffs recognized the right of defendants to conduct reasonable demonstrations in furtherance of their right to call attention to their petition for redress of alleged grievances, but alleged that the pattern of action described in the complaint did not constitute reasonable demonstration in support of such petition, and that the restraints sought were reasonable and not in violation of any rights of defendants guaranteed by the Constitutions of the United States and of Illinois."

Finally, it is to be noted that the temporary injunction entered below did not *prohibit* assembly, demonstrations or marches. The order temporarily *limited* the locations of same on public property on any given day, the number of persons participating, the time thereof (daylight) and required 24 hours' notice to the police of such activities on public property (R. 38-39).

REASONS FOR DENYING THE WRIT.

I.

THE STATE COURT PROCEEDINGS INVOLVE NO CONFLICT WITH THE DECISIONS OF THIS COURT RELATIVE TO TRIAL BY JURY.

On September 6, 1966, Petitioner herein was found guilty by the Circuit Court of Cook County, Illinois, of contempt of court in the violation of an injunction order. The sentence imposed was confinement for a period not to exceed six (6) months, or until released by process of law. (R. p. 86.) Petitioner seeks certiorari to review the decision on the basis of an alleged constitutional right to trial by jury in the case.

Within the last five months this Court rendered its decision in *Bloom* v. *Illinois,* 391 U. S. 194, 20 L. Ed. 2d 522, wherein it reaffirmed the holdings in *United States* v. *Barnett,* 376 U. S. 681 (1964), and *Cheff* v. *Schnackenberg,* 384 U. S. 373 (1966) relative to the nature of a contempt proceeding. This Court stated in the *Bloom* case at page 534 (20 L. Ed. 2d):

> "Our analysis of *Barnett, supra,* and *Cheff* v. *Schnackenberg, supra,* makes it clear that *criminal contempt is not a crime of the sort that requires the right to jury trial regardless of the penalty involved.*" (Emphasis added.)

In the *Bloom* case this Court held that the right to jury trial in contempt matters was limited to "serious" as distinguished from "petty" contempts and reaffirmed the decision in the *Cheff* case concerning a six (6) month punishment as a relevant criterion in distinguishing between serious and petty contempts. In discussing the *Cheff* case

in the recent *Bloom* decision, this Court stated at page 526 (20 L. Ed. 2d):

> ". . . the six months punishment imposed permitted dealing with the case as a prosecution for 'a petty offense, which under our decisions does not require a jury trial'." (Citations omitted.)

and further stated at page 534 (20 L. Ed. 2d):

> "Under the rule in *Cheff*, when the legislature has not expressed a judgment as to the seriousness of an offense . . . *we are to look to the penalty actually imposed as the best evidence of the seriousness of the offense.*"[1] (Emphasis added.)

Finally, this Court further reaffirmed the *Cheff* doctrine in *Dyke* v. *Taylor Implement Mfg. Co.*, 391 U. S. 216, when it stated at page 542-3 (20 L. Ed. 2d):

> "This court has not had occasion to state precisely where the line falls between punishments that can be considered 'petty' and those that cannot be. From *Cheff* v. *Schnackenberg* . . . it is clear that a six month sentence is short enough to be 'petty'. That holding is sufficient for resolution of this case."

Petitioner herein concedes that "it can be argued" that these cases dispose of its contention (Pet. for Cert. p. 10), but urges that this Court abandon this array of precedent and authority and hold that jury trials are required in *all* contempt proceedings. The reasons advanced by Petitioner for abandoning the doctrine of the *Bloom* and *Dyke* cases are that these cases do not adequately "articulate the distinction between petty and serious contempts" (Pet. for Cert., p. 9), and secondly, that a six month sentence (notwithstanding the determination of this Court) is not a petty punishment. (Pet. for Cert., p. 12.)

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1. As this Court noted in the *Bloom* case at 20 L. Ed. 2d 534, "Under Illinois laws no maximum punishment is provided for convictions for criminal contempt. *People* v. *Stollar*, 31 Ill. 2d 154. . . ."

Relative to both of Petitioner's assertions, eminent jurists of this Court have discussed these matters in thorough, exhaustive and scholarly dissenting opinions. (See: Dissenting Opinion, *Cheff* v. *Schnackenberg,* 384 U. S. 373, and *Dyke* v. *Taylor Implement Mfg. Co.,* 391 U. S. 216.) It would appear fair to assume therefore that these matters have heretofore been fully considered by this Court in reaching its decisions holding that there is no Constitutional right to jury trial in cases of "petty" contempt, that the penalty imposed is the best evidence of the nature of the contempt, and that a six-month sentence is a "petty" punishment. Moreover, it would seem clear that any incidental "practical problems" in implementation of the doctrine should not jeopardize the very important functions of the judicial system, which this Court stated in *Bloom* would be served by recognizing and applying the distinction between petty and serious contempt. (*Bloom,* 20 L. Ed. 2d at 533.)

Finally, in the case at bar the assertion of error in a denial of trial by jury is somewhat ironic. In the trial of the case, Petitioner presented *no evidence whatsoever,* and relied solely on the defense that the injunction order was void. (R. p. 275.) Petitioner's sole defense, therefore, was predicated on an issue of law, to-wit, the jurisdiction of the trial court. Thus, Petitioner herein seeks reversal of a case for a denial of trial by jury, where through his own choice, no disputed issue of fact for consideration by a jury was involved in the case.

II.

THE STATE COURT PROCEEDINGS INVOLVE NO CONFLICT WITH THE DECISIONS OF THIS COURT AND WERE COMPLETELY CONSISTENT WITH WALKER v. CITY OF BIRMINGHAM.

As was pointed out by the Illinois Appellate Court in its decision below, the injunction was issued to meet an emergency situation. It was issued *after* major civil disturbances had erupted in the City of Chicago which resulted in damage in excess of several million dollars to private property, the death of 27 persons, injury to some 375 others, and the arrest of some 1,300 persons. It was issued only *after* demonstrators were regularly attracting crowds of persons from several hundred to several thousand. It was issued only *after* the police had been unable to give complete protection due to the wide spread locations of multiple marches throughout the City—*after* defendant had consistently failed to give requested notice to the police of the locations of demonstrations, and *after* defendant had announced the intention of *continuing and increasing* such activity in furtherance of a program of developing *"creative tension"*. (See: Statement of Case, *supra.*)

Petitioner herein speaks in a number of instances of the temporary injunction below having been entered *ex parte* or without formal notice. The fact, however, is that petitioner herein was notified of the motion for a temporary injunction and was *in fact present at the hearing thereon.* He made no objection thereto at that time and while an attorney present offered to represent him, he chose not to be so represented. (R. pp. 18-20; 43-44.)

The temporary injunction order was entered on August 19, 1966, when, as above stated, petitioner was present in court. No attempt or effort was made then, or at any time

prior to August 22nd to dissolve or modify the said order. Three days later, on August 22, 1966, petitioner held a press conference with reporters and television cameras present, at which he announced his *"conscious intent to defy the court injunctions issued by Judge Cornelius Harrington"*. At the said press conference, petitioner also recognized the potential consequences of arrest and punishment, stating:

> "In the course of the last two years I have been arrested a total of fifteen times. In each and every case I have considered it not a punishment but a privilege to participate in the process of constantly amended and improved interpretation of what we, at any given moment, consider to be the law of the land".

While Petitioner attempts to characterize the march in defiance of the injunction as "wholly peaceful" with no noise, disruptions or disorders, the evidence at the trial established quite the contrary to be the case. (See: Statement of Fact, *supra,* p. 3). More significantly, however, whether the violation of the order did or did not cause a major riot, is totally irrelevant, for a Court's jurisdiction is certainly not governed by the results of the violation of its order. As discussed in more detail hereafter, given jurisdiction, a court of equity has power to punish as contempt the violation of its order—such order was intentionally and wilfully violated herein.

Petitioner herein concedes that *Walker* v. *City of Birmingham,* 388 U. S. 307, *reh. den.,* 389 U. S. 894, is completely dispositive of its argument and position herein. Petitioner urges, however, that this Court's decision in that case is wrong and should be overruled. Under the facts and circumstances of the case at bar, the arguments offered by petitioner in support of overuling the *Walker* case, are wholly without support in law or logic.

Petitioner's argument that the *Walker* case is distinguishable on the grounds of the penalty imposed is without merit. The emergency situation in Chicago, the grave circumstances of civil disorder, disturbance and turmoil and the very recent and complete enmeshment with violence of such activities in no way compared to the circumstances in the *Walker* case.[1] The infinitely greater danger to public safety and welfare and the grave consequences thereof clearly warranted greater punishment in the case at bar than that involved in the *Walker* case.

Petitioner's reliance on the case of *Thomas* v. *Collins,* 323 U. S. 516, herein is completely unsound. First, petitioner is in error in asserting it was ignored by this Court in the *Walker* case. (See: 388 U. S. at p. 336.) More significantly, however, the issue involved in the case at bar is whether an order can be *collaterally attacked* in a contempt proceeding for violation of the order. *Thomas* v. *Collins, supra,* did not involve a *collateral attack* of the order violated, in an appeal from the contempt conviction, but rather a *direct attack* upon the decision of the Texas court in a separate habeas corpus proceeding. While the contempt order was incidentally involved in the habeas corpus proceeding, the *Thomas* case is bottomed on a proper *direct attack* of a proceeding construing a relevant statute and *not* a collateral attack of a violated order in a conviction for contempt.

The additional authorities cited by petitioner under this argument afford no support for his position. In *United Gas, Coke, etc.* v. *Wisconsin Employment Board,* 340 U. S. 383, and in *In re Green,* 369 U. S. 689, the pre-emption doctrine was involved, which doctrine totally deprives a court of jurisdiction. *Johnson* v. *Virginia,* 373 U. S. 61 and

1. No situation of existing grave civil disorder was noted in the *Walker* case. The only mention of casualty was injury to a newsman and damage to a motorcycle. *Walker* v. *City of Birmingham,* 388 U. S. 307 at p. 311.

N. A. A. C. P. v. *Alabama,* 357 U. S. 449, also cited by petitioner are clearly distinguishable as cases wherein the order violated was *not a final and reviewable order,* which is a special category of case not applicable herein.

Finally, petitioner's assertion that to preclude collateral attack of the underlying order in a proceeding for contempt is to sanctify prior restraint on First Amendment rights, is a "muddled" confusion of fundamental legal doctrines and concepts.

The doctrine of precluding collateral attack in such situations is based on perhaps one of the most basic and fundamental principles in the law, to-wit, the right and power of a Court possessing jurisdiction, to punish as contempt the violation of its order. This principle obtains notwithstanding that the order may have been entered erroneously, irregularly or improvidently, so long as the Court had jurisdiction. (See: 12 ALR 2d 1059 and the comprehensive compilation of authorities of all jurisdictions therein.)

The rationale of the principle is uniformly recognized as being *the vindication of the process of law.* While there have been many articulations of the principle, it was perhaps most eloquently stated by the United States Supreme Court in the *United Mine Workers* case (330 U. S. 258) where it is stated at page 312:

> "There can be no free society without law administered through an independent judiciary. If one man can be allowed to determine for himself what is law, every man can. That means first chaos, then tyranny. Legal process is an essential part of the democratic process. For legal process is subject to democratic control by defined, orderly ways, which themselves are part of law."

Also implicit in petitioner's assertion is a misconception of First Amendment rights and freedoms. This Court has

consistently held that while such rights are fundamental, they are not in their nature absolute and are subject to limitation or restriction in relation to other legal rights, duties or legally protectible interests. Thus, this Court has stated relative to freedom of speech and assembly in *Cox* v. *Louisiana,* 379 U. S. 536, at page 554:

> "The rights of free speech and assembly, while fundamental in our democratic society, still do not mean that everyone with opinions or beliefs to express may address a group at any public place and at any time. The constitutional guarantee of liberty implies the existence of an organized society maintaining public order, without which liberty itself would be lost in the excess of anarchy. The control of travel on the streets is a clear example of governmental responsibility . . . *A restriction in that relation . . . cannot be disregarded by the attempted exercise of some civil right which in other circumstances, would be entitled to protection.*" (Emphasis added.)

This Court stated in *American Communications Ass'n.* v. *Douds,* 339 U. S. 382, at page 394:

> ". . . it has long been established that these freedoms (First Amendment) themselves are dependent upon the power of constitutional government to survive. If it is to survive it must have power to protect itself. . . . *Freedom of speech thus does not comprehend the right to speak on any subject at any time.*" (Emphasis added and insert for clarity.)

This Court stated in *Chaplinsky* v. *New Hampshire,* 315 U. S. 568, at page 571:

> "Allowing the broadest scope to the language and purpose of the Fourteenth Amendment, it is well understood that the right of free speech is not absolute at all times and under all circumstances."

This Court stated in *Hague* v. *C. I. O.,* 307 U. S. 496, at pages 515-516:

> "The privilege of a citizen of the United States to use the streets and parks for communication of views on national questions *may be regulated in the interests of all; it is not absolute, but relative, and must be exercized in subordination* to the general comfort and convenience, and in consonance with peace and good order. . . ." (Emphasis added.)

In substance, petitioner urges a special exception to the doctrine precluding collateral attack in contempt matters where claims of infringement of Constitutional rights are asserted. It is submitted that this Court in the *Walker* case eloquently but summarily answered this argument when it stated at page 321:

> ". . . respect for judicial process is a small price to pay for the civilizing hand of law which alone can give abiding meaning to constitutional freedom."

III.

THE STATE COURT PROCEEDINGS INVOLVE NO CONFLICT WITH THE DECISIONS OF THIS COURT BY VIRTUE OF THE ASSERTION OF VAGUENESS OR PRIOR RESTRAINT.

The petitioner states under his Point III that "The plain and simple reality of this case is that petitioner was punished because he exercised rights guaranteed by the Constitution." This characterization of the case is palpably erroneous. The plain and simple reality of this case is that when a man disobeys a court order which he conceives to be invalid as violating his rights, and he defies the democratically established legal processes which exist for the protection of his rights, the potentially disastrous consequences of such conduct to democratic government demands that punishment be inflicted unless the order is so absolutely void as to be tantamount to non-existent. *Walker* v. *City of Birmingham*, 388 U. S. 307 (1967); *U. S.* v. *United*

Mine Workers, 330 U. S. 259 (1947); *Howat* v. *Kansas,* 258 U. S. 181 (1922); *Meadowmoor Dairies* v. *Milk Wagon Drivers Union,* 371 Ill. 377, aff'd 312 U. S. 287 (1941).

Petitioner's argument under this point relative to "prior restraint" is virtually the same as that made under point II, which was discussed above in Respondent's point II. It should be observed, however, that the purported authorities cited by petitioner under this point afford him no support. Thus, in *Congress of Racial Equality* v. *Douglas,* 318 F. 2d 95 (5th Cir. 1963), the appeal there was from the entry of the temporary injunction, or a *direct attack* proceeding, which is not the situation in the case at bar. The irrelevance of the case of *Thomas* v. *Collins,* 323 U. S. 516, was discussed above. The irrelevance of *Bantam Books Inc.* v. *Sullivan,* 372 U. S. 58, lies, of course, in the distinction of freedom of speech in the *written* word. As stated in *Cox* v. *Louisiana,* 379 U. S. 536 at page 555:

> "We emphatically reject the notion urged by appellant that the First and Fourteenth Amendments afford the same kind of freedom to those who would communicate ideas by conduct such as patroling, marching and picketing on streets and highways, as these amendments afford to those who communicate ideas by pure speech."

Petitioner can find no support for its position in *Milk Wagon Drivers Union* v. *Meadowmoor Dairies,* 312 U. S. 287, for in that case this Court held that the restraint of otherwise completely lawful picketing was proper being justified by virtue of the "enmeshment in violence" of such activity. The striking similarity to the situation in the case at bar would hardly seem to be noted.

Finally, petitioner's argument of alleged "vagueness" of the injunction was again fully answered by this Court in the *Walker* case, when in noting that the breadth and

vagueness of injunction posed constitutional questions, this Court stated:

> "But the way to raise that question was to apply to the . . . courts to have the injunction modified or dissolved."

Even long prior to the *Walker* case, however, this Court had answered petitioner's argument herein in *Howat* v. *Kansas,* 258 U. S. 181 (1922), when it stated at pages 189-190:

> "An injunction duly issuing out of a court of general jurisdiction with equity powers upon pleadings properly invoking its action, and served upon persons made parties therein and within the jurisdiction, must be obeyed by them however erroneous the action of the court may be, even if the error be in the assumption of the validity of a seeming but void law going to the merits of the case. It is for the court of first instance to determine the question of the validity of the law and until its decision is reversed for error by orderly review, either by itself or by a higher court, its orders based on its decision are to be respected, and disobedience of them is contempt of its lawful authority, to be punished. *Gompers* v. *Bucks Stove & Range Co.,* 221 U. S. 418, 450; *Toy Toy* v. *Hopkins,* 212 U. S. 542, 548. See also *United States* v. *Shipp,* 203 U. S. 563, 573."

CONCLUSION.

Petitioner herein while purporting to seek certiorari to review a decision of the Illinois Appellate Court, concedes that there is no conflict or inconsistency with the decision below and the existing decisions of this Court. In essence, then, petitioner does not seek review of the decision below, but review of the decision of this Court.

As discussed above, petitioner's arguments herein relative to jury trial have been thoroughly reviewed and rejected by this Court in its *Cheff, Bloom* and *Dyke* de-

cisions. Petitioner's arguments relative to collateral attack of an injunction in contempt proceedings predicated on infringement of Constitutional rights were set to rest in the *Walker* decision.

Cutting through the solemn pronouncements of the sanctity of Constitutionally preferred freedoms and rights, petitioner's position below and here resolves down to a simple attack on a fundamental principle of law, to-wit; the right and power of a court, possessing jurisdiction, to punish as contempt the violation of its order. Petitioner asks this Court to repudiate the principle. The consequences of repudiation were heretofore noted in the *United Mine Workers* case (330 U. S. 258 at 312):

> "If one man can be allowed to determine for himself what is the law, every man can. That means first chaos, then tyranny."

And, more recently, in the *Walker* case (388 U. S. 307):

> ". . . judicial process is . . . the civilizing hand of law, which alone can give abiding meaning to constitutional freedom."

For the foregoing reasons, the petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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